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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL ANTHONY BILLINGSLEY,

Defendant and Appellant.

A125083

(Solano County  
Super. Ct. No. VCR191905)

While fleeing from police during a routine traffic stop, defendant Michael Anthony Billingsley was shot by a taser and dropped a loaded handgun. A jury convicted him of possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)(1); count 1)<sup>1</sup> and illegal possession of ammunition (§ 12316, subd. (b)(1); count 2). The trial court imposed a consecutive sentence on count 2 without stating reasons. Defendant contends this was error. However, the parties agree that the sentence on count 2 should be stayed pursuant to section 654. We shall remand this matter for resentencing.

**I. FACTS**

On July 22, 2007, Solano County Deputy Sheriff Jon Couvillion stopped a car for Vehicle Code violations near the intersection of Interstate 780 and Lemon Street in Vallejo. A woman was driving; defendant was in the front passenger seat. Because defendant was not wearing his seat belt properly, in violation of the Vehicle Code, Couvillion asked him for identification. Couvillion could not verify the name and birthdate defendant provided, and asked him for a driver's license number. Couvillion

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<sup>1</sup> Unless otherwise noted, subsequent statutory citations are to the Penal Code.

determined that the license had been issued to a woman in Chatsworth, California, and accordingly asked defendant to step out of the car.

As defendant got out of the car, Couvillion took hold of his left arm. Deputy Enoch Knight, who had arrived to assist Couvillion, took hold of defendant's right arm. Defendant slipped out of his jacket and started running westbound in the eastbound lanes of Interstate 780 towards Lemon Street. Couvillion shouted "taser" three times and then fired his taser at defendant, who fell to the ground behind Couvillion's patrol car. Couvillion ordered defendant to lie on his stomach, but he refused. Couvillion tasered defendant again.

At this point, and before defendant could be handcuffed, Couvillion noticed a handgun lying on the ground about eight to 10 inches from defendant's right hand. Couvillion had not seen the firearm when he initially walked up to the stopped car.

Couvillion tasered defendant a third time and retrieved the weapon, which was a .22 Beretta automatic pistol. There was a round in the chamber and four in the magazine. The weapon was "ready to fire." Couvillion testified it was not common to find an abandoned loaded firearm in the city of Vallejo.

The parties stipulated that defendant had a prior felony conviction.

As noted, defendant was convicted of possession of a firearm by a felon, count 1, and illegal possession of ammunition, count 2. After trial, the probation department recommended concurrent sentencing on counts 1 and 2.

At sentencing, the trial court imposed the middle term of two years on count 1, doubled to four years because of a prior strike. The court stated that it "disagree[d] with probation in regards to [a] concurrent sentence" on count 2, and imposed a consecutive sentence of eight months, doubled to one year four months because of the strike conviction. Defendant's sentence of five years four months was enhanced by a prior prison term conviction (§ 667.5, subd. (b)), making a total sentence of six years four months.

## II. DISCUSSION

The trial court did not state its reasons for imposing a consecutive sentence on count 2. This is error. (*People v. Tillotson* (2007) 157 Cal.App.4th 517, 545.) The People argue the error has not been preserved for appeal because defendant failed to object below to the court's failure to state reasons. (See *People v. Scott* (1994) 9 Cal.4th 331, 352–353 (*Scott*).) But the waiver doctrine of *Scott* does not apply to sentences which violate section 654. Such a sentence is “ ‘unauthorized’ ” and in excess of the court's jurisdiction. (*Scott, supra*, at p. 354, fn. 17.)

The parties agree that defendant cannot be punished for count 2 because that would violate section 654's ban on multiple punishment. (See *People v. Lopez* (2004) 119 Cal.App.4th 132, 138.) It is axiomatic, then, that the trial court could not impose a consecutive (*or* concurrent) sentence on count 2 because that would amount to impermissible multiple punishment. (See 3 Witkin, Cal. Criminal Law (3d ed. 2000) Punishment, § 284, pp. 375–376 [“Consecutive sentencing is subject to the restriction on multiple punishment of {section} 654. {Citation.}”]; Cal. Rules of Court, rule 4.424 [trial court must consider applicability of section 654 before imposing either consecutive or concurrent sentence].)

The sentence on count 2 violates section 654 and must be stayed.

## III. DISPOSITION

This matter is remanded to the trial court for reconsideration and resentencing.

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Marchiano, P.J.

We concur:

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Margulies, J.

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Dondero, J.